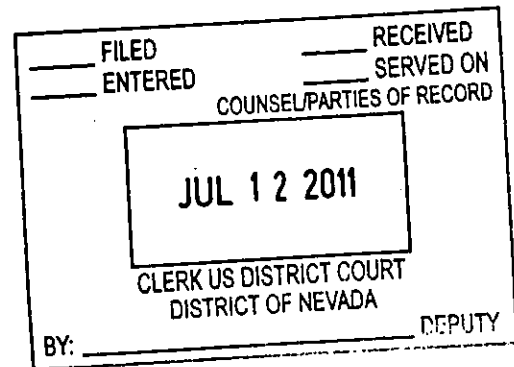


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6 *Attorneys for NDOC Defendants*



7  
8 **IN THE UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 MARRITTE FUNCHES,

11 Plaintiff,

12 v.

13 E.K. McDANIEL, et al.

14 Defendants.  
15

Case No. 3:09-cv-00343-LRH-VPC

**STIPULATED PROTECTIVE ORDER  
AND PROTECTIVE ORDER**

16  
17 In order to protect the confidentiality of confidential information obtained by the parties  
18 in connection with this case, the parties hereby agree as follows:

19 1. Any party or non-party may designate as "confidential" (by stamping the relevant  
20 page or otherwise set forth herein) any document or response to discovery which that party or  
21 non-party considers in good faith to contain information involving trade secrets, or confidential  
22 business or financial information, or confidential inmate information including, but not limited  
23 to, pre-sentence investigation reports, victim information, Inspector General investigation  
24 reports, Serious Threat Group validation records, and/or medical records, subject to protection  
25 under the Federal Rules of Civil Procedure or Nevada law ("Confidential Information"). Where  
26 a document or response consists of more than one page, the first page and each page on  
27 which confidential information appears shall be so designated.

28 ///

1           2.     A party or non-party may designate information disclosed during a deposition or  
2 in response to written discovery as "confidential" by so indicating in said response or on the  
3 record at the deposition and requesting the preparation of a separate transcript of such  
4 material. Additionally, a party or non-party may designate in writing, within twenty (20) days  
5 after receipt of said responses or of the deposition transcript for which the designation is  
6 proposed, that specific pages of the transcript and/or specific responses be treated as  
7 "confidential" information. Any other party may object to such proposal, in writing or on the  
8 record. Upon such objection, the parties shall follow the procedures described in paragraph 8  
9 below. After any designation made according to the procedure set forth in this paragraph, the  
10 designated documents or information shall be treated according to the designation until the  
11 matter is resolved according to the procedures described in paragraph 8 below, and counsel  
12 for all parties shall be responsible for making all previously unmarked copies of the designated  
13 material in their possession or control with the specified designation.

14           3.     All information produced or exchanged in the course of this case (other than  
15 information that is publicly available) shall be used by the party or parties to whom the  
16 information is produced solely for the purpose of this case:

17           4.     Except with the prior written consent of other parties, or upon prior order of this  
18 Court obtained upon notice to opposing counsel, Confidential Information shall not be  
19 disclosed to any person other than:

20           (a)    counsel for the respective parties to this litigation, including in-house counsel  
21 and co-counsel retained for this litigation;

22           (b)    employees of such counsel;

23           (c)    individual defendants, class representatives, any officer or employee of a party,  
24 to the extent deemed necessary by Counsel for the prosecution or defense of this litigation;

25           (d)    consultants or expert witnesses retained for the prosecution or defense of this  
26 litigation, provided that each such person shall execute a copy of the Certification annexed to  
27 this Order as Exhibit "A" (which shall be retained by counsel to the party so disclosing the  
28 Confidential Information and made available for inspection by opposing counsel during the

1 pendency or after the termination of the action only upon good cause shown and upon order  
2 of the Court) before being shown or given any Confidential Information and provided that if the  
3 party chooses a consultant or expert employed by the Defendant(s) (as listed on Appendix A),  
4 the party shall notify the opposing party, or designating nonparty, before disclosing any  
5 Confidential Information to that individual and shall give the opposing party an opportunity to  
6 move for a protective order preventing or limiting such disclosure;<sup>1</sup>

7 (e) any authors or recipients of the Confidential Information;

8 (f) the Court, Court personnel, and court reporters; and

9 (g) witnesses (other than persons described in paragraph 4(e)). A witness shall  
10 sign the Certification before being shown a confidential document. Confidential Information  
11 may be disclosed to a witness who will not sign the Certification only in a deposition at which  
12 the party who designated the Confidential Information is represented or has been given notice  
13 that Confidential Information shall be designated "Confidential" pursuant to paragraph 2  
14 above. Witnesses shown Confidential Information shall not be allowed to retain copies.

15 5. Any persons receiving Confidential Information shall not reveal or discuss such  
16 information to or with any person who is not entitled to receive such information, except as set  
17 forth herein.

18 6. No party or non-party shall file or submit for filing as party of the court record any  
19 documents under seal without first obtaining leave of court. Notwithstanding any agreement  
20 among the parties, the party seeking to file a paper under seal bears the burden of  
21 overcoming the presumption in favor of public access to papers filed in court.

22 7. A party may designate as "Confidential" documents or discovery materials  
23 produced by a non-party by providing written notice to all parties of the relevant document  
24 numbers or other identification within thirty (30) days after receiving such documents or  
25 discovery materials. Any party or non-party may voluntarily disclose to others without  
26 restriction any information designated by that party or non-party as confidential, although a  
27 document may lose its confidential status if it is made public.

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<sup>1</sup> To-date, no party hereto has designated any consultants or expert witnesses in this matter.

1           8.     If a party contends that any material is not entitled to confidential treatment, such  
2 party may at any time give written notice to the party or non-party who designated the  
3 material. The party or non-party who designated the material shall have twenty-five (25) days  
4 from the receipt of such written notice to apply to the Court for an order designating the  
5 material as confidential. The party or non-party seeking the order has the burden of  
6 establishing that the document is entitled to protection.

7           9.     Notwithstanding any challenge to the designation of material as Confidential  
8 Information, all documents shall be treated as such and shall be subject to the provisions  
9 hereof unless and until one of the following occurs:

10           (a)    the party or non-party claims that the material is Confidential Information  
11 withdraws such designation in writing; or

12           (b)    the party or non-party who claims that the material is Confidential Information  
13 fails to apply to the Court for an order designating the material confidential within the time  
14 period specified above after receipt of a written challenge to such designation; or

15           (c)    the Court rules the material is not confidential.

16           10.    All provisions of this Order restricting the communication or use of Confidential  
17 Information shall continue to be binding after the conclusion of this action, unless otherwise  
18 agreed or ordered. Upon conclusion of the litigation, a party in the possession of Confidential  
19 Information, other than that which is contained in pleadings, correspondence, and deposition  
20 transcripts, shall either (a) return such documents no later than thirty (30) days after  
21 conclusion of this action to counsel for the party or non-party who provided such information,  
22 or (b) destroy such documents within the time period upon consent of the party who provided  
23 the information and certify in writing within thirty (30) days that the documents have been  
24 destroyed.

25           11.    The terms of this Order do not preclude, limit, restrict, or otherwise apply to the  
26 use of documents at trial.

27     ///

28     ///

1        12. Nothing herein shall be deemed to waive any applicable privilege or work  
2 product protection, or to affect the ability of a party to seek relief for an inadvertent disclosure  
3 of material protected by privilege or work product protection.

4        13. Any witness or other person, firm or entity from which discovery is sought may  
5 be informed of and may obtain the protection of this Order by written advice to the parties'  
6 respective counsel or by oral advice at the time of any deposition or similar proceeding.

7        14. The Plaintiff and the NDOC Defendants have previously exchanged certain  
8 documents as initial disclosures pursuant to Federal Rule of Civil Procedure 26. The NDOC  
9 Defendants have provided certain documents that have been identified as being Confidential  
10 Information, and have designated them as such in their Index of Defendants' Disclosures to  
11 Plaintiff, also being previously provided to the parties. The parties hereto stipulate and agree  
12 that these documents are retroactively subject to this Protective Order, and the terms and  
13 conditions herein.

14        15. Given Plaintiff's incarcerated status and the nature of Confidential Information,  
15 the parties hereby stipulate and agree that, while certain Confidential Information relevant to  
16 Plaintiff's claims may be disclosed to him, he must not possess any document(s) containing  
17 such Confidential Information as it may adversely affect the safety and security of the Plaintiff,  
18 other inmates, staff and/or the institution.

19        16. The NDOC Defendants contend that certain Confidential Information must not  
20 be provided or disclosed to Plaintiff including, but not limited to, Confidential Information  
21 regarding separatees and/or confidential informants for safety and security purposes. The  
22 NDOC Defendants reserve the right to provide Plaintiff with redacted copies of certain

23 ///

24 ///

25 ///

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28 ///

1 Confidential Information and/or provide the other parties with notice that certain Confidential  
2 Information will not be provided. Any party may object to the redaction and/or notice in the  
3 manner set forth in paragraph 8.

4 IT IS SO STIPULATED AND AGREED.

5  
6  
7 By: /S/ JEFFREY S. BLANK  
8 JEFFREY S. BLANK, ESQ.  
9 Nevada State Bar #3913  
485 W. Fifth St.  
Reno, NV 89503


Date: July 7, 2011

10 *Attorney for Plaintiff, Marritte Funches*

11  
12  
13  
14 By: /S/ BRENT L. RYMAN  
15 BRENT L. RYMAN, ESQ.  
16 Erickson Thorpe & Swainston, Ltd.  
99 W. Arroyo St.  
Reno, NV 89505

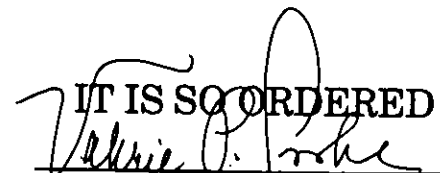
Date: July 7, 2011

17 *Attorney for Defendants, Mike Stolk and*  
18 *Martin Sorenson*

19  
20  
21 By:   
22 KELLY S. WERTH  
23 Deputy Attorney General  
24 Office of the Attorney General  
100 N. Carson St.  
Carson City, NV 89701

Date: July 7, 2011

25 *Attorney for NDOC Defendants*

  
IT IS SO ORDERED  
U.S. MAGISTRATE JUDGE

DATED: July 11, 2011

# EXHIBIT A

# EXHIBIT A

**CERTIFICATION**

I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Protective Order dated \_\_\_\_\_, in \_\_\_\_\_, Case No. \_\_\_\_\_. I have been given a copy of that Order and read it. I agree to be bound by the Order. I will not reveal the Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information - including copies, notes, or other transcriptions made therefrom - in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information- including copies, notes or other transcriptions made therefrom- to the counsel who provided me with the Confidential Information. I hereby consent to the jurisdiction of the United States District Court for the purpose of enforcing the Protective Order.

By: \_\_\_\_\_ Date: \_\_\_\_\_

**PROTECTIVE ORDER**

Having considered the preceding **STIPULATED PROTECTIVE ORDER**, as agreed to by the parties hereinabove, and good cause having been shown,

IT IS HEREBY ORDERED that the Stipulated Protective Order as set forth hereinabove is granted.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 7<sup>th</sup> day of July, 2011, I caused to be served a copy of the foregoing **STIPULATED PROTECTIVE ORDER AND PROTECTIVE ORDER**, by U.S. District Court CM/ECF Electronic Filing, on the following interested parties:

JEFFREY S. BLANCK ESQ.  
485 W. FIFTH ST  
RENO, NV 89503

BRENT L. RYMAN, ESQ.  
ERICKSON, THORPE & SWAINSTON, LTD  
99 WEST ARROYO ST  
RENO, NV 89509

  
\_\_\_\_\_  
KELLY S. WERTH